

December 20, 2018

Mr. Eric Chodnicki  
Daft, McCune & Walker, Inc.  
501 Fairmount Avenue, Suite 300  
Towson, Maryland 21286

Re: Provenza Property at Broadmead  
Forest Conservation Variance Request  
Tracking # 03-18-2813

Dear Mr. Chodnicki:

A request for a variance from the Baltimore County Code Article 33, Title 6 Forest Conservation was received by this Department of Environmental Protection and Sustainability (EPS) on October 10, 2018 to impact 16 of 77 specimen trees on the 9.2-acre Provenza Property, which has been annexed onto Broadmead. These specimen tree impacts are necessary to construct a new, safer entrance to the retirement community. EPS originally approved a special variance (tracking # 03-17-2411) on March 2, 2017 to both permit permanent impacts to 12 of these 16 specimen trees for this new entrance road and postpone full compliance with the Forest Conservation Law for the Provenza Property until such time as another development activity is proposed on that property. This latest variance request does not affect the 2017 variance allowing that postponement. That approval and all of its conditions still apply. However, the extent of the anticipated specimen tree impacts has increased as a result of the proposed turn lane and median modifications to York Road (Maryland Route 45) having to be shifted further to the north due to engineering constraints discovered during final design.

Of the four additional specimens to be removed, two trees are in poor condition, one tree is non-native, and all but one are within existing forest. The applicant proposes to mitigate for impacts to a 33.5-inch Black Walnut (*Juglans nigra*) specimen tree in fair condition via a fee-in-lieu of mitigation payment of \$991 into Baltimore County's Forest Conservation Fund. Forest clearing on both the Provenza and Broadmead Properties is required to facilitate construction of the relocated entrance road as well as lane and median improvements to York Road. That clearing and protection of the remaining specimen trees will be detailed on a revised final forest conservation plan (FCP).

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance

request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of beneficial use of his property. We acknowledge that the number and distribution of the specimen trees would preclude construction of a safer entrance to the existing Broadmead retirement community. However, denial of this variance request would not deprive the petitioner of all beneficial use of the property, as it is currently a successful retirement community. Therefore, we find that this criterion has not been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. We find that rather than the general conditions of the neighborhood, the petitioner's plight is largely due to the number and distribution of specimen trees across the property and the need to impact these trees in order to replace an unsafe entrance. Therefore, the plight is not due to conditions in the neighborhood, and the second criterion has been met.

The third criterion (Subsection 33-6-116(d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The granting of this special variance will not alter the essential character of the surrounding neighborhood, as no change of land use is proposed, and the amount and location of forest clearing would be minimal. Consequently, we find that this criterion has been met.

The fourth criterion (Subsection 33-6-116(e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. Construction of the entrance road will comply with the Law for the Protection of Water Quality, Streams, Wetlands and Floodplains. Moreover, none of the specimen trees to be removed are in existing or proposed Forest Buffer Easement. Additionally, stormwater quality management is being provided for the proposed improvements. Therefore, we find that granting of the special variance will not adversely affect water quality and that this criterion has been met.

The fifth criterion (Subsection 33-6-116(e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The variance arises from the need to construct a safer entrance to an existing retirement community due to circumstances beyond the control of the petitioner. Moreover, the additional property on which to construct the safer entrance was not available to the petitioner until recently. Consequently, the variance request does

not arise from any condition or circumstance resulting from the petitioner's actions; thus, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. Allowing the removal of 16 specimen trees to provide a safe entrance would be consistent with the spirit and intent of the law. This is especially true when considering that specimen tree impacts will be mitigated, that the remaining specimen trees will be adequately protected during and after construction, and that any reforestation required for constructing the entrance will be addressed on the FCP for this project. Therefore, we find that this criterion has been met.

Based on our review, this Department finds that all of the required criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 of the Baltimore County Code with the following conditions:

1. No mitigation is required for removal of the 15 specimen trees within forest. However, prior to issuance of any permit, a \$991 fee in lieu of mitigation shall be paid for the lone 33.5-inch DBH Black Walnut tree outside of forest. Please make the check payable to Baltimore County.
2. In accordance with the 2017 variance, any future development activity at Provenza Property will require full compliance with the Forest Conservation Law. This compliance includes but is not limited to: revising the current FCP, addressing the outcome of any approved forest conservation worksheet and forest retention investigation report (any resultant reforestation requirement), and recording a Forest Conservation Easement and its Declaration of Protective Covenants in Baltimore County Land Records via a right of way plat or record plat.
3. Prior to issuance of any Baltimore County permit, blaze orange high visibility fence shall be installed along the limit of disturbance (LOD) wherever the LOD is within 50 feet of any remaining specimen tree or forest to remain. This protective fence shall be illustrated on the plan view and mentioned in the sequence of operations on both the sediment control and final FCP. The applicant shall request EPS inspection and approval of the completed fence installation prior to grading permit issuance.
4. The following note must appear on all subsequent plans for this project:

“A special variance was granted on December 20, 2018 to Baltimore County's Forest Conservation Law to allow permanent impacts to 16 specimen trees onsite. Conditions were placed on this variance including payment of a fee in

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lieu of specimen tree mitigation and protection of the remaining specimen trees and forest onsite.”

5. A final forest conservation plan (FCP) addressing the conditions of this variance as well as all EPS comments on the preliminary FCP must be submitted to EPS and approved prior to grading and sediment control permit approval.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the property owner sign the statement on the following page and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please contact Mr. Michael S. Kulis at (410) 887-3980.

Sincerely yours,

David V. Lykens  
Acting Director

DVL/msk

c. Marian Honeczy, Maryland DNR

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I/we agree to the above conditions to bring my/our property into compliance with  
Baltimore County's Forest Conservation Law.

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Property Owner's Signature

Date

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Property Owner's Printed Name